



**NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 622***

AMENDMENT NO. _____
(to be filled in by
Principal Clerk)

S622-ASVf-31 [v.3]

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Amends Title [NO]
First Edition

Date _____, 2019

Senator _____

moves to amend the bill on page 11, line 5, through page 15, line 10, by rewriting the lines to read:

"PART IV. MARKETPLACE FACILITATORS TO COLLECT SALES TAX

SECTION 4.1.(a) G.S. 105-164.3 reads as rewritten:

"§ 105-164.3. Definitions.

The following definitions apply in this Article:

...

(20a) Marketplace. – A physical or electronic place, forum, platform, application, or other method by which a marketplace seller sells or offers to sell items, the delivery of or first use of which is sourced to this State.

(20b) Marketplace facilitated sale. – The sale of an item by a marketplace facilitator on behalf of a marketplace seller that occurs through a marketplace.

(20c) Marketplace facilitator. – A person that, directly or indirectly and whether through one or more affiliates, does both of the following:

a. Lists or otherwise makes available for sale a marketplace seller's items through a marketplace owned or operated by the marketplace facilitator.

b. Does one or more of the following:

1. Collects the sales price or purchase price of a marketplace seller's items or otherwise processes payment.

2. Makes payment processing services available to purchasers for the sale of a marketplace seller's items.

(20d) Marketplace seller. – A person that sells or offers to sell items through a marketplace regardless of any of the following:

a. Whether the person has a physical presence in this State.

b. Whether the person is registered as a retailer in this State.

c. Whether the person would have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

d. Whether the person would not have been required to collect and remit sales and use tax had the sales not been made through a marketplace.

...."

SECTION 4.1.(b) G.S. 105-164.8(b) reads as rewritten:



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1 "(b) Remote Sales. – A retailer who makes a remote sale is engaged in business in this
2 State and is subject to the tax levied under this Article if at least one of the following conditions
3 is met:

4 ...

5 (3) The retailer solicits or transacts business in this State by employees,
6 independent contractors, agents, or other representatives, whether the remote
7 sales ~~thus~~ subject to taxation by this State result from or are related in any
8 other way to the solicitation or transaction of business. A retailer is presumed
9 to be soliciting or transacting business by an independent contractor, agent, or
10 other representative if the retailer enters into an agreement with a resident of
11 this State under which the ~~resident~~, person, for a commission or other
12 consideration, directly or indirectly refers potential customers, whether by a
13 link on an Internet Web site or otherwise, to the retailer. This presumption
14 applies only if the cumulative gross receipts from sales by the retailer to
15 purchasers in this State who are referred to the retailer by all ~~residents~~ persons
16 with this type of agreement with the retailer is in excess of ten thousand dollars
17 (\$10,000) during the preceding four quarterly periods. This presumption may
18 be rebutted by proof that the ~~resident~~ person with whom the retailer has an
19 agreement did not engage in any solicitation in the State on behalf of the seller
20 that would satisfy the nexus requirement of the United States Constitution
21 during the four quarterly periods in question.

22 ...

23 (9) The ~~retailer, with respect to~~ retailer makes remote sales into North Carolina
24 sourced to this State, including sales as a marketplace seller, for the previous
25 or the current calendar year, had one or more year that meet either of the
26 following:

27 a. Gross sales in excess of one hundred thousand dollars (\$100,000).

28 b. Two hundred or more separate transactions.

29 (10) The retailer is a marketplace facilitator that makes sales, including all
30 marketplace facilitated sales for all marketplace sellers, sourced to this State
31 for the previous or the current calendar year that meet either of the following:

32 a. Gross sales in excess of one hundred thousand dollars (\$100,000).

33 b. Two hundred or more separate transactions."

34 **SECTION 4.1.(c)** Part 2 of Article 5 of Chapter 105 of the General Statutes is
35 amended by adding a new section to read:

36 **"§ 105-164.4J. Marketplace facilitated sales.**

37 (a) Scope. – This section applies to a marketplace facilitator that makes sales, including
38 all marketplace facilitated sales for all marketplace sellers, sourced to this State for the previous
39 or the current calendar year that meet either of the following:

40 (1) Gross sales in excess of one hundred thousand dollars (\$100,000).

41 (2) Two hundred or more separate transactions.

42 (b) Payment of Tax. – A marketplace facilitator that meets the threshold in subsection (a)
43 of this section is considered the retailer of each marketplace facilitated sale it makes and is liable

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1 for collecting and remitting the sales and use tax on all such sales. A marketplace facilitator is
2 required to comply with the same requirements and procedures as all other retailers registered or
3 who are required to be registered to collect and remit sales and use tax in this State. A marketplace
4 facilitator is required to collect and remit sales tax as required by this section regardless of
5 whether a marketplace seller for whom it makes a marketplace facilitated sale meets any of the
6 following conditions:

7 (1) Has a physical presence in this State.

8 (2) Is required to be registered to collect and remit sales and use tax in this State.

9 (3) Would have been required to collect and remit sales and use tax in this State
10 had the sale not been made through a marketplace.

11 (4) Would not have been required to collect and remit sales and use tax in this
12 State had the sale not been made through a marketplace.

13 (c) Report. – A marketplace facilitator must provide or make available to each
14 marketplace seller the information listed in this subsection with respect to marketplace facilitated
15 sales that are made on behalf of the marketplace seller and that are sourced to this State. The
16 information may be provided in any format and shall be provided or made available no later than
17 10 days after the end of each calendar month. The required information to be provided or made
18 available to each marketplace seller is as follows:

19 (1) Gross sales.

20 (2) The number of separate transactions.

21 (d) Refund of Tax. – If a purchaser receives a refund on any portion of the sales price
22 from a marketplace facilitator who collected and remitted the tax on the retail sale, the provisions
23 of G.S. 105-164.11A(a) apply.

24 (e) Class Actions. – No class action may be brought against a marketplace facilitator in
25 any court of this State on behalf of customers arising from or in any way related to an
26 overpayment of sales or use tax collected on facilitated sales by a marketplace facilitator,
27 regardless of whether that claim is characterized as a tax refund claim. Nothing in this subsection
28 affects a customer's right to seek a refund as provided under G.S. 105-164.11.

29 (f) Agreements. – Nothing in this section shall be construed to interfere with the ability
30 of a marketplace facilitator and a marketplace seller to enter into an agreement with each other
31 regarding the fulfillment of the requirements of this Article, except that an agreement may not
32 require a marketplace seller to collect and remit sales and use tax on marketplace facilitated sales.

33 (g) Use Tax Obligation. – Nothing in this section affects the obligation of any purchaser
34 to remit use tax for any taxable transaction for which a marketplace facilitator does not collect
35 and remit sales or use tax.

36 (h) Limitation. – This section does not apply to an accommodation facilitator, an
37 admission facilitator, or a service contract facilitator whose collection and remittance
38 requirements are set out in G.S. 105-164.4F, 105-164.4G, and 105-164.4I, respectively."

39 **SECTION 4.2.(a)** G.S. 105-164.3 reads as rewritten:

40 **"§ 105-164.3. Definitions.**

41 The following definitions apply in this Article:

42 (1) Accommodation. – A hotel room, a motel room, a residence, a cottage, or a
43 similar lodging facility for occupancy by an individual.

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(1a) Accommodation facilitator. – A person that contracts, either directly or indirectly, with a provider of an accommodation to perform, either directly or indirectly, one or more of the activities listed in this subdivision. The term includes a real estate broker as defined in G.S. 93A-2. The activities are:

- a. Market the accommodation and accept payment or collect credit card or other payment information for the rental of the accommodation.
- b. List the accommodation for rental on a forum, platform, or other application for a fee or other consideration.

...."

SECTION 4.2.(b) G.S. 105-164.4F reads as rewritten:

"§ 105-164.4F. Accommodation rentals.

(a) Definition. – The following definitions apply in this section:

- (1) Accommodation. – A hotel room, a motel room, a residence, a cottage, or a similar lodging facility for occupancy by an individual.
- (2) Facilitator. – A person who is not a rental agent and who contracts with a provider of an accommodation to market the accommodation and to accept payment from the consumer for the accommodation.
- (3) Rental agent. – The term includes a real estate broker, as defined in G.S. 93A-2.

(b) Tax. – The gross receipts derived from the rental of an accommodation are taxed at the general rate set in G.S. 105-164.4. Gross receipts derived from the rental of an accommodation include the sales price of the rental of the accommodation. The sales price of the rental of an accommodation is determined as if the rental were a rental of tangible personal property. The sales price of the rental of an accommodation ~~marketed~~ made by a an accommodation facilitator includes any charges or fees, by whatever name called, designated as facilitation fees and any other charges charged by the accommodation facilitator to the purchaser of the accommodation that are necessary to complete the rental. The tax is due and payable by the retailer in accordance with G.S. 105-164.16.

(b1) Retailer. – Except as otherwise provided in subsection (c) of this section, the retailer of the rental of an accommodation is one or more of the persons listed below that collects the payment, or a portion of the payment, for the rental of the accommodation. The retailer is liable for reporting and remitting the tax due on the portion of the gross receipts derived from the rental of the accommodation that the retailer collects. The retailer may be one or more of the following:

- (1) The provider of the accommodation.
- (2) An accommodation facilitator.

(c) Certain Accommodation Facilitator Transactions. – This subsection applies only to an accommodation facilitator that is operated by or on behalf of a hotel or a hotel corporation, that facilitates the rental of hotel accommodations solely for the hotel or the hotel corporation's owned or managed hotels and franchisees, and that collects payment, or a portion of the payment, for the rental of an accommodation. An accommodation facilitator subject to this subsection is not considered the retailer of the rental of the accommodation. A facilitator must report to the retailer with whom it has a contract the sales price a consumer pays to the facilitator for an accommodation rental marketed by the facilitator. A retailer must notify a facilitator when an

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~~accommodation rental marketed by the facilitator is completed, and the~~ The accommodation
facilitator must send the retailer ~~the portion of the sales price the facilitator owes the retailer and~~
the tax due on the sales ~~price-price, or the portion of the sales price, the accommodation~~ facilitator
~~collected no later than 10 days after the end of each calendar month. A-An accommodation~~
facilitator that does not send the retailer the tax due on the sales ~~price-price, or the portion of the~~
~~sales price the accommodation facilitator collected,~~ is liable for the amount of tax the
accommodation facilitator fails to send. ~~A-An accommodation~~ facilitator is not liable for tax sent
to a retailer but not remitted by the retailer to the Secretary. Tax payments received by a retailer
from ~~a-an accommodation~~ facilitator are held in trust by the retailer for remittance to the
Secretary. A retailer that receives a tax payment from ~~a-an accommodation~~ facilitator must remit
the amount received to the Secretary. A retailer is not liable for tax due but not received from a
an accommodation facilitator. ~~The requirements imposed by this section on a retailer and a~~
~~facilitator are considered terms of the contract between the retailer and the facilitator.~~

(c1) Accommodation Facilitator Report. – An accommodation facilitator must file with
the Secretary an annual report by March 31 of each year for the prior calendar year for
accommodation rentals it makes. The annual report must be provided in electronic format and
include the property owner's name, the property owner's mailing address, the physical location
of the accommodation, and gross receipts information for the rentals.

(d) ~~Rental Agent. – A person who, by written contract, agrees to be the rental agent for~~
~~the provider of an accommodation is considered a retailer under this Article and is liable for the~~
~~tax imposed by this section. The liability of a rental agent for the tax imposed by this section~~
~~relieves the provider of the accommodation from liability.~~

(e) Exemptions. – The tax imposed by this section does not apply to the following:

- (1) A private residence, cottage, or similar accommodation that is rented for fewer
than 15 days in a calendar year ~~other than a private residence, cottage, or~~
~~similar accommodation listed with a real estate broker or agent.~~ unless the
rental of the accommodation is made by an accommodation facilitator.
- (2) An accommodation supplied to the same person for a period of 90 or more
continuous days.
- (3) An accommodation arranged or provided to a person by a school, camp, or
similar entity where a tuition or fee is charged to the person for enrollment in
the school, camp, or similar entity."

SECTION 4.2.(c). G.S. 160A-215(c) reads as rewritten:

"(c) Collection. – A retailer who is required to remit to the Department of Revenue the
State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room
occupancy tax to the taxing city on and after the effective date of the levy of the room occupancy
tax. The room occupancy tax applies to the same gross receipts as the State sales tax on
accommodations and is calculated in the same manner as that tax. ~~A rental agent or a facilitator,~~
~~as defined in G.S. 105-164.4F, An accommodation facilitator, as defined in G.S. 105-164.3, has~~
the same responsibility and liability under the room occupancy tax as the ~~rental agent or~~
accommodation facilitator has under the State sales tax on accommodations.

If a taxable accommodation is furnished as part of a package, the bundled transaction
provisions in G.S. 105-164.4D apply in determining the sales price of the taxable

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1 accommodation. If those provisions do not address the type of package offered, the person
2 offering the package may determine an allocated price for each item in the package based on a
3 reasonable allocation of revenue that is supported by the person's business records kept in the
4 ordinary course of business and calculate tax on the allocated price of the taxable
5 accommodation.

6 A retailer must separately state the room occupancy tax. Room occupancy taxes paid to a
7 retailer are held in trust for and on account of the taxing city.

8 The taxing city shall design and furnish to all appropriate businesses and persons in the city
9 the necessary forms for filing returns and instructions to ensure the full collection of the tax. An
10 operator of a business who collects a room occupancy tax may deduct from the amount remitted
11 to the taxing city a discount equal to the discount the State allows the retailer for State sales and
12 use tax."

13 **SECTION 4.2.(d)** G.S. 153A-155(c) reads as rewritten:

14 "(c) Collection. – A retailer who is required to remit to the Department of Revenue the
15 State sales tax imposed by G.S. 105-164.4(a)(3) on accommodations is required to remit a room
16 occupancy tax to the taxing county on and after the effective date of the levy of the room
17 occupancy tax. The room occupancy tax applies to the same gross receipts as the State sales tax
18 on accommodations and is calculated in the same manner as that tax. ~~A rental agent or a~~
19 ~~facilitator, as defined in G.S. 105-164.4F,~~ An accommodation facilitator, as defined in
20 G.S. 105-164.3, has the same responsibility and liability under the room occupancy tax as the
21 ~~rental agent or accommodation~~ facilitator has under the State sales tax on accommodations.

22 If a taxable accommodation is furnished as part of a package, the bundled transaction
23 provisions in G.S. 105-164.4D apply in determining the sales price of the taxable
24 accommodation. If those provisions do not address the type of package offered, the person
25 offering the package may determine an allocated price for each item in the package based on a
26 reasonable allocation of revenue that is supported by the person's business records kept in the
27 ordinary course of business and calculate tax on the allocated price of the taxable
28 accommodation.

29 A retailer must separately state the room occupancy tax. Room occupancy taxes paid to a
30 retailer are held in trust for and on account of the taxing county.

31 The taxing county shall design and furnish to all appropriate businesses and persons in the
32 county the necessary forms for filing returns and instructions to ensure the full collection of the
33 tax. A retailer who collects a room occupancy tax may deduct from the amount remitted to the
34 taxing county a discount equal to the discount the State allows the retailer for State sales and use
35 tax."".

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____